

HON. JOHN C. COUGHENOUR

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

Wolfire Games, LLC, Sean Colvin, Susann  
Davis, Daniel Escobar, William Herbert, Ryan  
Lally, Hope Marchionda, Everett Stephens,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

Valve Corporation,

Defendant.

Case No. 2:21-cv-00563-JCC

**MOTION FOR APPOINTMENT OF  
INTERIM CO-LEAD CLASS  
COUNSEL**

NOTED FOR MOTION CALENDAR:  
August 13, 2021

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## I. INTRODUCTION

Plaintiffs in the instant *Wolfire* action propose a leadership structure for this putative class action (voluntarily consolidated from two previously-filed class actions),<sup>1</sup> as well as for any other subsequently-filed class actions that are consolidated into this action.<sup>2</sup> The proposed structure consists of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”), Constantine Cannon LLP (“Constantine Cannon”), and Vorys, Sater, Seymour and Pease LLP (“Vorys”) as Interim Co-Lead Class Counsel (collectively, “Proposed Co-Lead Class Counsel”).

Proposed Co-Lead Class Counsel are collectively responsible for developing this antitrust case against Valve Corporation (“Valve”), the dominant platform for personal-computer (“PC”) video games, and have been litigating this matter collaboratively for months. Vorys filed the first antitrust action against Valve on behalf of consumers on January 28, 2021, in the Central District of California. Quinn Emanuel and Constantine Cannon filed the *Wolfire* action in this Court on April 27, 2021, on behalf of consumers and game developers/publishers.<sup>3</sup> Each of these actions followed long investigations by counsel, dating back years. Recognizing the extensive overlap in the actions, Proposed Co-Lead Class Counsel, on their own initiative, collaborated and organized the two cases into a single consolidated action in this Court, and filed a Consolidated Amended Class Action Complaint on June 11, 2021, on behalf of a proposed class of game publishers and game purchasers.

Proposed Co-Lead Class Counsel negotiated with Defendant regarding a schedule for upcoming briefing, are already in the process of responding to Valve’s motion to compel arbitration (Dkt. 35), and have begun responding to Valve’s motion to dismiss (Dkt. 37). In

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<sup>1</sup> Consolidated Amended Class Action Complaint, ECF No. 34, *Wolfire Games, LLC, et al. v. Valve Corp.*, Case No. 2:21-cv-00563-JCC (W.D. Wash.) (filed Jun. 11, 2021).

<sup>2</sup> Plaintiffs are aware of one other putative class action case filed as related to this case, but that is not yet consolidated—*Dark Catt Studios Holdings, Inc. v. Valve Corp.*, Case No. 2:21-cv-00872-JCC (W.D. Wash.) (filed Jun. 28, 2021). Plaintiffs have served a copy of these papers on counsel that have appeared for Dark Catt in that action.

<sup>3</sup> Complaint, ECF No. 1, *Wolfire Games, LLC, et al. v. Valve Corp.*, Case No. 2:21-cv-00563-JCC (W.D. Wash.) (filed April 27, 2021).

1 short, having developed this case, these counsel are already prosecuting it collaboratively and  
 2 efficiently and should be appointed as Co-Lead Class Counsel.

3 After substantial progress was made in this litigation, on June 28, 2021, a new case was  
 4 filed on behalf of game developers in the *Dark Catt* action, largely mimicking the existing claims  
 5 in the *Wolfire* action.<sup>4</sup> Proposed Co-Lead Class Counsel reached out to the attorneys  
 6 representing Dark Catt (“Dark Catt Counsel”) and offered to add their plaintiff to this case and  
 7 involve them in the action, but they have insisted on nothing less than being added as Co-Lead  
 8 Class Counsel for a publisher-only class. Dark Catt Counsel’s proposal is unworkable. Adding  
 9 a fourth lead counsel firm would not benefit the class—it would only result in inefficiency. And  
 10 doing so is certainly not warranted for the *Dark Catt* Counsel that did not originate or develop  
 11 the case, and seek instead to piggyback off the efforts of Proposed Co-Lead Class Counsel.

12 Unlike many other antitrust class actions, this action is not a follow-on action from  
 13 investigations pursued by the Federal Trade Commission, Department of Justice, or other  
 14 governmental authority. Instead, drawing upon their experience in litigating antitrust claims  
 15 regarding two-sided platforms in the *Interchange Fee* and *ATM Fee* litigations, as well as against  
 16 multiple online platform providers (such as Ticketmaster and Apple), Proposed Co-Lead Class  
 17 Counsel built this case independently from scratch, investing hundreds of hours of attorney time  
 18 into vetting potential claims, interviewing class members and industry sources, and consulting  
 19 with experts. As a matter of public policy, to appoint counsel other than Proposed Co-Lead  
 20 Class Counsel would allow lawyers filing copycat complaints to “free-ride on the considerable  
 21 investments made by the drafting attorney[s], thereby reducing the return on investments in  
 22 producing complaints” and “reduc[ing] the incentive to engage in such activity.”<sup>5</sup>

23 Appointing the three firms who originated this case and have been prosecuting it  
 24

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25 <sup>4</sup> Complaint, ECF No. 1, *Dark Catt Studios Holdings, Inc. v. Valve Corp.*, Case No. 2:21-cv-00872-JCC  
 26 (W.D. Wash.) (filed Jun. 28, 2021).

27 <sup>5</sup> Bruce H. Kobayashi and Larry E. Ribstein, Class Action Lawyers As Lawmakers, 46 Ariz. L. Rev.  
 28 733, 752-53 (2004). To identify prospective lawsuits such as this one, Quinn Emanuel for its part has  
 configured a number of “Horizon” practice groups to investigate potential claims in developing areas.  
 Olson Decl. ¶ 13.

efficiently and collaboratively for months—Quinn Emanuel, Constantine Cannon, and Vorys—is warranted under Federal Rule of Civil Procedure 23(g)(3). Proposed Co-Lead Counsel have invested substantial time and resources to investigate, file, consolidate, and litigate the claims at issue in the proposed class actions. They have deep experience prosecuting complex class actions and antitrust cases—particularly in antitrust cases involving two-sided platforms such as Valve’s Steam platform—and will bring that experience, and their firms’ vast resources, to these cases. Counsel will coordinate closely with one another to prosecute the class actions efficiently and effectively, without duplication of effort, and will represent the diversity of our society and the legal profession with their varied backgrounds and experiences. Plaintiffs, therefore, respectfully request that the Court adopt the leadership structure proposed herein.

## II. STATEMENT OF FACTS

Proposed Co-Lead Counsel initially filed two separate cases—one on behalf of consumers and one on behalf of both consumers and video-game publishers—who have been harmed and who continue to be harmed by Valve’s anticompetitive conduct. As alleged in the Consolidated Amended Class Action Complaint (“CAC”), ECF No. 34, Valve dominates the market for personal computer game distribution, “and thwarts effective competition by engaging in two separate but related anticompetitive acts. First, Valve ties together the use of its gaming platform to its store, requiring game publishers to sell their games in Valve’s store if they want access to the ‘Steam’ Gaming Platform, which is Valve’s PC Desktop Gaming Platform. Second, Valve imposes a Platform Most-Favored-Nations Clause (the ‘Valve PMFN’) on game publishers, which inhibits the ability of publishers to sell their games at lower prices to consumers through rival storefronts. Together, these anticompetitive acts protect Valve’s dominance in the relevant markets and ensure Valve can continue to collect its 30% tax on nearly every sale of computer games in the United States.” CAC ¶ 4.

Vorys filed the first action, *Colvin et al. v. Valve Corp.*, Case No. 2:21-cv-00801 (C.D. Cal. filed Jan. 28, 2021), after 18 months of factual investigation into Valve’s business practices on its dominant Steam platform and their effects. Rubin Decl. ¶ 19. Vorys’ investigation included the retention of a well-credentialed economist specializing in these issues. Rubin Decl.

¶ 20. The *Colvin* action challenged Valve’s imposition of its most-favored-nations clause (“MFN”) that prohibited game publishers from selling their games at lower prices on the few platforms that compete with Valve’s dominant Steam platform, and thereby artificially inflated game prices to supra-competitive levels. *Colvin* Compl. ¶¶ 3-4, Rubin Decl. ¶ 21. *Colvin* sought certification of: (i) a class of purchasers seeking damages for supra-competitive prices of PC games; (ii) a class of purchasers seeking injunctive relief; (iii) a sub-class of parents seeking damages for their purchases of PC games for their minor children; and (iv) a sub-class of parents seeking injunctive relief. *Id.*, *Colvin* Compl. ¶¶ 98-100. Vorys filed an amended complaint on April 8.

Quinn Emanuel and Constantine Cannon filed the second action, and the first in this Court, on April 27, 2021. *Wolfire Games, LLC, et al. v. Valve Corp.*, Case No. 2:21-cv-00563-JCC (W.D. Wash. filed Apr. 27, 2021) (ECF No. 1). Both firms had been investigating this action independently of Vorys. Constantine Cannon had been retained by Wolfire Games, a video-game developer and publisher, in March 2019. Golden Decl. ¶ 3. Thereafter, Constantine Cannon conducted its own extensive factual investigation and research into Valve’s business practices. Golden Decl. ¶ 4. In addition to researching publicly available information, Constantine Cannon lawyers interviewed multiple game developers, publishers, and industry insiders. Golden Decl. ¶ 4. Quinn Emanuel had also been investigating Valve’s business practices and their effects, including by interviewing industry participants. Olson Decl. ¶ 14.

Valve’s alleged conduct harms both game publishers and consumers in the same core ways.<sup>6</sup> Quinn Emanuel and Constantine Cannon’s complaint, therefore, includes both sets of

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<sup>6</sup> See, e.g., CAC ¶ 268 (“Gamers overpay when they buy their games from Valve directly, and publishers overpay when Valve extracts its commission before giving the publisher the proceeds”); CAC ¶ 271 (“These profit levels far exceed what would occur in a competitive market. Valve maintains them through the anticompetitive means described above, coming at the expense of the publishers who create the games and the gamers who play them”); CAC ¶ 283 (“With competition, Valve’s commissions would be lower, and there would be lower retail prices available to gamers. At lower prices, gamers would purchase more games, increasing output”); CAC ¶ 284 (“If publishers made more revenue per sale (as they would be able to do if commissions were more competitive), then they could develop more games and, by virtue of that

1 plaintiffs, as game consumers and publishers share an interest in proving that Valve’s conduct is  
 2 unlawful and raises overall prices on its platform, and litigating together is far more efficient and  
 3 effective than litigating apart.

4 Aware of Vorys’ *Colvin* case, Quinn Emanuel and Constantine Cannon reached out and  
 5 discussed how to consolidate the cases. After conferring with Quinn Emanuel and Constantine  
 6 Cannon, Vorys agreed the Western District of Washington would be a suitable venue and  
 7 executed a stipulation with Valve to move the *Colvin* case to the Western District of  
 8 Washington.<sup>7</sup> To address the common interests of both consumers and publishers, Quinn  
 9 Emanuel, Constantine Cannon, and Vorys agreed to jointly file the CAC, which they did on June  
 10 11. Before filing the CAC, the three firms coordinated with Valve’s counsel to enter into a  
 11 stipulation, so-ordered by the Court, that consolidated the *Colvin* and *Wolfire* actions and set a  
 12 schedule for filing the CAC, Valve’s response, and any briefing. Consolidation Order, May 20,  
 13 2021 (ECF No. 29). Valve filed its motion to compel arbitration on June 26, 2021, with a noting  
 14 date of September 17, 2021. Counsel for Plaintiffs are in the midst of briefing their opposition.

15 Two weeks after Plaintiffs filed their CAC—and roughly five months after Vorys filed  
 16 the *Colvin* action—Dark Catt Studios Holdings (“DCS Holdings”) filed its complaint.  
 17 According to its complaint, DCS Holdings “is a multimedia production company and  
 18 development studio with a focus on film, animation, and narrative media forms,” *Dark Catt*  
 19 Compl. ¶ 24, and one of its subsidiaries previously sold PC desktop games on Steam (but no  
 20 more). *Id.* ¶¶ 26-27. The *Dark Catt* complaint makes essentially identical allegations as  
 21 Plaintiffs’ CAC, and largely relies on the same theory of competitive harm and facts. *Compare*  
 22 CAC ¶¶ 1-22, 164-168, 184-205, 228-265 with *Dark Catt* Compl. ¶¶ 1-22, 59-73.

23 In light of the competing *Dark Catt* complaint, Quinn Emanuel, Constantine Cannon, and  
 24 Vorys conferred, and agreed to the leadership structure proposed herein, which fairly recognizes

25  
 26 expanded development, there would be greater quantity and variety of games in the  
 marketplace”).

27 <sup>7</sup> Joint Stipulation to Change Venue, ECF No. 35, *Colvin et al. v. Valve Corp.*, Case No. 2:21-  
 28 cv-00801 (C.D. Cal. filed May 7, 2021).



all three firms’ contributions in investigating Valve’s conduct and its effects, filing their individual complaints and the CAC, and responding to Valve’s motion to compel arbitration and stay, along with Valve’s motion to dismiss. Plaintiffs also agree this leadership structure will facilitate the efficient and successful litigation of all proposed class actions. In fact, the three firms also serve as counsel for dozens of opt-out merchant plaintiffs in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, Case No 05-MD-01720 (MKB) (VMS). In that case, the three firms have collaborated on extraordinarily complex civil litigation against Visa, Mastercard, and the major issuers of credit and debit cards on behalf of their joint clients, which include most of the major merchants across the United States. Olson Decl. ¶¶ 9, 22, 26; Rubin Decl. ¶¶ 7-8, 25; Shinder Decl. ¶¶ 9, 15.

### III. LEGAL STANDARD

Rule 23(g)(3) allows the Court to designate interim class counsel “to act on behalf of a putative class before determining whether to certify a matter as a class action.” *McFadden v. Microsoft Corp.*, 2020 WL 5642822, at \*1 (W.D. Wash. Sept. 22, 2020). “Factors relevant to the appointment of counsel include: ‘(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.’” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(A)). In addition, “[t]he Court may also ‘consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.’” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(B)).

### IV. ARGUMENT

#### A. Counsel Have Done Substantial Work to Investigate and Challenge Valve’s Conduct

As detailed above, Vorys, Quinn Emanuel, and Constantine Cannon are responsible for originating and efficiently organizing the prosecution of this important antitrust case regarding Valve’s dominant Steam platform on behalf of both consumers and video game publishers. Rule 23(g)(1)(A)(i)—“the work counsel has done in identifying or investigating potential claims in the action”—thus strongly favors their leadership appointments. These three firms have collectively

1 and collaboratively expended significant time integrating the facts learned and alleged in the  
 2 prior separate complaints, developing the CAC into a cohesive document that lays out, in great  
 3 detail, Valve's anticompetitive conduct, coordinating with Valve's counsel for the efficient  
 4 progress of the litigation, and working on the response to Valve's motion to compel arbitration.  
 5 In effect, the three firms have already been proceeding as co-lead counsel for the proposed class.

6 In evaluating this factor, courts consider whether firms have "already devoted substantial  
 7 time and resources" in vetting potential claims. *In re Facebook, Inc., IPO Sec. & Derivative*  
 8 *Litig.*, 288 F.R.D. 26, 44 (S.D.N.Y. 2012) (appointing firm that "already devoted substantial time  
 9 and resources . . . in identifying and investigating the claims set forth in the complaint").<sup>8</sup> This is  
 10 a particularly important factor here, as the Proposed Co-Lead Class Counsel developed the case  
 11 in the absence of a governmental investigation (and are already well into motion practice).

12 Dark Catt Counsel may argue that they, too, conducted an independent investigation of  
 13 the claims at issue. Their complaint, however, contains virtually no new substantive allegations.  
 14 Further, the *Dark Catt* case comes roughly five months after the Vorys Complaint, after the  
 15 Proposed Co-Lead Counsel stipulated with Valve to have the Vorys case moved to Seattle, after  
 16 Proposed Co-Lead Counsel consolidated their cases, after Proposed Co-Lead Counsel  
 17 collaborated on the CAC, and after Proposed Co-Lead Counsel began working to respond to  
 18 Valve's motion to compel arbitration.

19 **B. Counsel Have Significant Experience with Complex Class Actions and Deep**  
 20 **Knowledge of Antitrust Law and Problems Posed by Large Technology Firms**

21 Quinn Emanuel, Constantine Cannon, and Vorys have vast experience with and  
 22 knowledge of antitrust cases generally, antitrust cases involving two-sided technology platforms,  
 23 and antitrust class actions. Rule 23(g)(1)(A)(ii)-(iii)—"counsel's experience in handling class  
 24 actions, other complex litigation, and the types of claims asserted in the action" and "counsel's  
 25 knowledge of the applicable law"—thus also strongly favors the proposed leadership structure.

26 \_\_\_\_\_  
 27 <sup>8</sup> See also *Michelle v. Artic Zero, Inc.*, 2013 WL 791145, at \*3 (S.D. Cal. Mar. 1, 2013)  
 28 (selecting counsel who "demonstrated they have conducted more research and investigation in  
 developing the case"); *In re Mun. Derivatives Antitrust Litig.*, 252 F.R.D. 184, 186 (S.D.N.Y.  
 2008); MOORE'S FEDERAL PRACTICE § 23.120(3)(a) (3d. Ed. 2007).

Quinn Emanuel is the world's largest law firm devoted solely to business litigation. Quinn Emanuel has been named a "litigation powerhouse" by *The American Lawyer*, a "global force in litigation" by *The Wall Street Journal*, a "Tier One" antitrust practice by *Benchmark Litigation*, "Antitrust Litigation Department of the Year" by *The Recorder*, and "Class Action Group of the Year" by *Law360*, and is regularly named one of "The Four Firms that GCs Fear The Most" by BTI Consulting Group. Olson Decl. Ex Nos. 1-5. Quinn Emanuel has a long string of victories on behalf of antitrust and class plaintiffs and defendants. *See, e.g., In re Credit Default Swaps Antitrust Litig.*, No. 13-md-02476 (S.D.N.Y.) (obtaining over \$1.87 billion in settlements); *ISDAfix Antitrust Litig.*, No. 14-cv-7126 (S.D.N.Y.) (obtaining more than \$500 million in settlements); *see also* Olson Decl. ¶¶ 4-7 (listing cases). The mediator in the *Credit Default Swaps* case, the Hon. Daniel Weinstein (Ret.), declared that in his "30-plus years of mediating high-stakes disputes, this was one of the finest examples of efficient and effective lawyering by plaintiffs' counsel that I have ever witnessed." Weinstein Decl., *In re: Credit Default Swaps Antitrust Litig.*, 13-md-2476, Dkt No. 447, ¶ 4. In appointing Quinn Emanuel as class counsel in that case, Judge Cote of the Southern District of New York observed Quinn Emanuel is "well equipped with trial lawyers who can actually go into court and try a case. It has run massive discovery cases by itself essentially. And it has extraordinary strengths with respect to appellate litigation." Olson Decl. ¶ 6.

**Steig D. Olson**, a partner at Quinn Emanuel, was one of the principal attorneys in *In re Credit Default Swaps Antitrust Litigation*, resulting in one of the largest antitrust class action settlements in history (Olson Decl. ¶¶ 4, 6), and has been named a "Rising Star in the field of competition law by *Law360*, and a "Leading Lawyer" by *Legal 500 USA*. Olson Decl. Ex. Nos. 6-8. **Adam Wolfson**, also a partner at Quinn Emanuel, has played a significant role in a number of antitrust and class actions involving two-sided platforms, including, *inter alia*, *Mackmin et al. v. Visa Inc.*, No. 11-cv-0181 (D.D.C.) and *Songkick v. Live Nation Entertainment Inc. et al.*, 2:15-cv-09814 (C.D. Cal.). Olson Decl. ¶ 19. Mr. Wolfson has also taken class actions to final judgment, including recovering \$5.4 billion for two classes of health insurers. *See* Olson Decl. ¶ 20. **Alicia Cobb** is Of Counsel in and leads Quinn Emanuel's Seattle office, and represents

1 plaintiffs in many significant antitrust cases including *The Home Depot v. Visa Inc. et al.*, No.  
 2 16-cv-5507 (E.D.N.Y.), and *In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL No.  
 3 1869 (D.D.C.). Olson Decl. ¶ 22.

4 Although Constantine Cannon has represented both antitrust plaintiffs and defendants  
 5 over the past three decades, its renown has been for bringing large antitrust cases against  
 6 dominant technology platforms. The firm was lead counsel for a certified litigation class of over  
 7 5,000,000 merchants in *In re Visa Check/MasterMoney Antitrust Litigation*. *Visa Check* settled  
 8 on the eve of trial for a \$3 billion cash payment (the third largest cash component among  
 9 antitrust settlements) and the complete rescission of the challenged conduct. 297 F. Supp. 2d  
 10 503, 506-07 (E.D.N.Y. 2003). That injunctive relief is estimated to have saved merchants and  
 11 the American economy over \$25 billion, making it the highest valued antitrust settlement in  
 12 history. *Id.* at 512. As described by the Court in approving the settlement:

13 [T]he excellence of the representation of plaintiffs, especially in  
 14 light of the very high quality of opposing counsel, cannot seriously  
 15 be debated. Constantine & Partners is a premiere plaintiffs'  
 16 litigation firm, specializing in antitrust litigation particularly and  
 17 complex commercial litigation generally. Its work is uniformly  
 18 excellent, and thus it is no surprise that it has led the effort that  
 19 produced the largest antitrust settlement ever.

20 *Id.* at 524. Constantine Cannon's representation of certified antitrust classes and individual  
 21 antitrust plaintiffs has consistently demonstrated its willingness and ability to take cases to trial,  
 22 leading to highly successful results for its clients. *See Shinder Decl.* ¶¶ 3-11.

23 **Jeffrey Shinder** is the Managing Partner of Constantine Cannon's New York City office.  
 24 Mr. Shinder is the lead attorney representing over 60 merchant plaintiffs in their antitrust claims  
 25 against Visa and Mastercard in the *Interchange Fee* litigation. He was also among the lead  
 26 lawyers in *Visa Check*. Mr. Shinder has been named a "Super Lawyer" as well as "Best Lawyer"  
 27 in antitrust in New York and in the United States since 2007. **Ankur Kapoor** is a partner at  
 28 Constantine Cannon and focuses on antitrust litigation. *Shinder Decl.* ¶ 13. He was lead counsel  
 for the defense of All Nippon Airways Co., Ltd. against an antitrust class action involving  
 passenger airfares, *In re Transpacific Passenger Air Transportation Antitrust Litigation* (N.D.

Cal.), which settled shortly before trial was scheduled to commence. Shinder Decl. ¶ 13. In 2017, he was named to Global Competition Review's *Who's Who Legal: Competition – Future Leaders*. **David Golden** is a partner at Constantine Cannon, and was also one of the principal attorneys representing the plaintiff in *TruePosition, Inc. v. LM Ericsson* (E.D. Pa.), an antitrust suit alleging conspiracy and monopolization claims against telecommunication suppliers and standards-setting organizations. Shinder Decl. ¶ 14. **Owen Glist** is a partner at Constantine Cannon. He has substantial expertise in class-certification matters, and clerked for the Honorable Denny Chin, then of the Southern District of New York. Shinder Decl. ¶ 15.<sup>9</sup>

Finally, Vorys is one of the largest law firms in the country, representing thousands of clients who range from start-up businesses to Fortune 500 corporations, from non-profit organizations to governmental entities and industry trade groups, and to parties embroiled in sprawling, multi-state class action litigation. Rubin Ex. E. Particularly relevant to this case, Vorys is a leader in litigation, including both antitrust and class-action cases for both plaintiffs and defendants. In connection with its litigation work, Vorys has obtained hundreds of millions of dollars in settlements and trial verdicts for thousands of plaintiffs over the years. Rubin Decl. ¶ 7. **Kenneth J. Rubin** is a partner with the Vorys' Columbus, Ohio office. Rubin Decl. ¶ 7. He is a member of the Litigation Group, is the Chair of the Antitrust Subgroup, and has tried numerous cases, including as first chair at trial in federal district court in a case regarding commercial litigation and competition issues. Mr. Rubin was co-lead counsel for plaintiffs in a multi-plaintiff commercial fraud case against a national insurance company in which the jury returned a verdict in our clients' favor, and has represented litigants in several class-action cases, achieving substantial class-action settlements on behalf of class members in two cases. **Timothy B. McGranor** is a partner in Vorys' Columbus, Ohio office. Rubin Decl. ¶ 8. He is a member of the Litigation Group, and has significant experience in complex litigation matters. In addition to his trial work in the state and federal courts, Mr. McGranor has appeared before the courts of appeals in Ohio and the Sixth Circuit, and regularly participates in actions before the Ohio

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<sup>9</sup> Messrs. Glist, Golden, and Kapoor are also among the principal attorneys at Constantine Cannon in the *Interchange Fee* litigation.

Supreme Court. Rubin Decl. ¶ 8. **Kara M. Mundy** is a senior associate in Vorys' Columbus, Ohio office. Rubin Decl. ¶ 10. She is a member of the Litigation Group and the Antitrust Subgroup. Ms. Mundy regularly represents litigants in antitrust and other complex disputes.

**C. Counsel Will Bring Extensive Human and Financial Resources to Litigate These Proposed Class Actions**

Quinn Emanuel, Vorys, and Constantine Cannon together have more than sufficient human and financial resources to litigate a complex matter like this. Quinn Emanuel has more than 800 lawyers across 25 offices on four continents, and an office in Seattle headed up by Ms. Cobb. Vorys has nearly 375 attorneys who are located in eight offices in Ohio, Washington, D.C., Texas, Pennsylvania and California, and has a litigation technology department that can work to provide support across firms and e-discovery vendors. Constantine Cannon has 76 lawyers across four offices, and has maintained a focus on antitrust litigation and class-action practice since the firm's inception. Constantine Cannon also has an in-house e-discovery team, that can efficiently reduce or obviate the need for third-party discovery vendors.

Together, Proposed Co-Lead Class Counsel will provide unparalleled resources to prosecute this case against Valve. Rule 23(g)(1)(A)(iv)—“the resources that counsel will commit to representing the class”—also strongly favors the proposed leadership appointments.

**D. Proposed Co-Lead Counsel Are Well Suited to Represent Both Consumers and Game Publishers**

As the *Wolfire* Plaintiffs allege in the Consolidated Amended Complaint, Valve's allegedly anticompetitive practices directly harm both game publishers and game purchasers. CAC VI, ¶¶ 266-301. “By blocking competition, Valve's conduct has directly led to gamers and publishers overpaying, allowing Valve to extract a supracompetitive cut of every game sale that far exceeds the costs Valve bears. Gamers overpay when they buy their games from Valve directly, and publishers overpay when Valve extracts its commission before giving the publisher the proceeds.” *Id.* ¶ 268.

Accordingly, the Consolidated Amended Complaint brings this case on behalf of a class composed of those who were directly overcharged by Valve as a result of its unlawful conduct, defined as “All persons and entities who, directly or through an agent, purchased or sold a PC



1 game on the Steam Store in the United States and its territories from January 28, 2017 through  
 2 the present (the ‘Class Period’).”<sup>10</sup> Because all members of the class share a strong common  
 3 interest in proving that Valve’s conduct has harmed competition overall, across Valve’s  
 4 platform, Proposed Co-Lead Counsel believe that the most efficient course is for this case to be  
 5 pursued on behalf of a single class. Nevertheless, we understand that Dark Catt Counsel intends  
 6 to argue that the case should be splintered into different two cases, with Dark Catt representing  
 7 game publishers only.

8 But splitting this case and dividing the class of direct purchasers is neither efficient nor in  
 9 the best interest of class members, and is not warranted at this stage. Notably, in its complaint,  
 10 Dark Catt alleges the exact same price restraints and the exact same inability for game publishers  
 11 to constrain (and push down) Valve’s commissions by offering lower game prices on other  
 12 storefronts with lower commissions. *Dark Catt* Compl. ¶¶ 130-135. That is what *all* class  
 13 members will need to prove, including game consumers. Appointing two sets of counsel will  
 14 therefore not achieve any efficiencies nor avoid any actual conflicts; it will only magnify the  
 15 costs the class members must bear. Moreover, if any actual conflicts actually do arise down the  
 16 line, Proposed Co-Lead Counsel have already accounted for such possibilities by noting in the  
 17 CAC that, if and as appropriate, the class could be divided into sub-classes. CAC ¶ 303.

## 18 V. CONCLUSION

19 For the reasons discussed above, Plaintiffs respectfully request that the Court appoint  
 20 Constantine Cannon, Quinn Emanuel, and Vorys as Interim Co-Lead Class Counsel.

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 27 <sup>10</sup> Like other two-sided platforms, Valve has direct purchasers on both sides of its platform.  
 28 *See, e.g., Apple Inc. v. Pepper*, 139 S. Ct. 1514, 1525 (2019) (explaining that both iPhone  
 consumers *and* iPhone app developers are direct purchasers under *Illinois Brick*).

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2 Respectfully submitted,

3 By /s/ Alicia Cobb

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 27, 2021, I caused a true and correct copy of the foregoing to be filed in this Court's CM/ECF system, which will send notification of such filing to counsel of record. I also caused a true and correct copy of the foregoing to be served on counsel for *Dark Catt* via email and first class mail to the addresses below:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED on this 27<sup>th</sup> day of July, 2021.

/s/ Alicia Cobb

Alicia Cobb